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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.854 OF 2006
IN
SUIT NO.3506 OF 1990

G.Ram Construction Company Plaintiff
versus
Chowgule & Co. (Hind) Pvt.Ltd. Defendants

Mr.D.D.Madon, Sr.Adv. a/w Mr.Kapil Moye i/by Shah & Singhavi for plaintiff.

Mr.Uday Bobade i/by Sayaji Nangare for defendants.

CORAM : A.M.KHANWILKAR, J.

DATE : 17th August 2007

PC :

1. Heard counsel for the parties. Perused the pleadings and documents on record including further affidavit filed by the plaintiff dated 16th August 2007. Upon considering the averments made in the affidavit I am more than convinced that the plea taken by the plaintiff that he was suddenly required to travel out of India on 13th April 2006 itself, is an incorrect plea. No fault can be found with the Commissioner who has recorded a finding that no such representation

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was made on behalf of the plaintiff till 12th April 2006 disclosing intention to fly out of India. More over, even after the plaintiff has filed further affidavits before this Court, has not been able to explain what prevented the plaintiffs from informing the Court Commissioner on the previous hearing itself that he was required to fly out of India on 13th April 2006. Significantly, the recently filed affidavit dated 16th August 2007 states that the plaintiff did not travel on 13th April 2006 as is the stand taken before the Commissioner and also in the present application but only on 18th April 2006. Suffice it to observe that the explanation offered by the plaintiff for his absence on 13th April 2006 is unacceptable. However, by way of indulgence, the plaintiff's request in the present Chamber Summons for setting aside the order passed by the Commissioner dated 21st April 2006 and 3rd May 2006 of closure of plaintiffs evidence, is set aside in the interest of justice on condition that plaintiffs will pay costs quantified at Rs.10,000/- (Rs.Ten thousand only) to the defendants within one week from today. Payment of costs is condition precedent for this indulgence.

2. In other words, the Chamber Summons is made absolute in terms of prayer clauses (a) and (b) by directing the Commissioner to conclude the recording of evidence on or before 24th September 2007 and submit report to this Court before 15th October 2007. It is made clear that no adjournment be granted at the instance of the plaintiffs on any count hereinafter before the Commissioner. This does not, however, mean that the defendants can take adjournment before the Commissioner. In the event the Commissioner forms an opinion that the matter is being delayed at the instance of any party, may submit an interim report to this Court which shall be placed for appropriate directions on the following Court working day after it’s receipt in the registry.

3. It is further clarified that in view of this order the praecipae filed by the defendants for closing their evidence will have to be ignored. In other words, it will be open to the defendants to examine their witnesses if they so desire at a latter point of time. Chamber Summons is disposed of on the above terms.

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(A.M.KHANWILKAR, J.)